

§ 111.60

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(1) Transmits a copy of the proposed statement of charges;

(2) Informs him that formal proceedings are available to him;

(3) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;

(4) Invites him to show cause why the formal proceedings should not be instituted;

(5) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises him of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 days of the date of the notice.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30344, Aug. 26, 1986]

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request such information in writing. He shall set forth in his request in what respect the proposed statement of charges leaves him in doubt and describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the port director such information is reasonably necessary to enable the broker to prepare his response, he shall furnish the broker with such information.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.61 Decision on preliminary proceedings.

The port director shall prepare a summary of any oral presentations made by the broker or his attorney and

forward it to the Commissioner together with a copy of each paper filed by the broker. The port director shall also give to the Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Commissioner determines that the broker has satisfactorily responded to the proposed charges, and that further proceedings are not warranted he shall so inform the port director who shall notify the broker. If no response is filed or the Commissioner determines that the broker has not satisfactorily responded to the proposed charges, he shall so advise the port director and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker, the Commissioner shall instruct the port director to omit those charges from the statement of charges.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) He may be represented by counsel;

(c) He will have the right to cross-examine witnesses;

(d) He will be notified within 10 days after service of this notice of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, he may file, in duplicate with the port director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual licensee.* The port director shall serve the notice of charges and the statement of charges against an individual licensee as follows:

(1) By delivery to the broker personally;

(2) By certified mail, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The port director shall serve the notices of charges and the statement of charges against a partnership, association, or corporation as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any such member or officer with demand for a return card signed by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* Within 10 days after service of the notice and statement of charges, the port director shall serve upon the broker or his attorney, by one of the methods enumerated in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing shall be scheduled to take place within 15 days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by ordinary mail or by one of the methods set forth in § 111.63 or upon the broker's attorney.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing, notifying the broker or his attorney in writing of the extension and the new time for which the hearing has been scheduled.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.66 Failure to appear.

When an accused broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) shall proceed with the hearing as scheduled, and shall hear evidence submitted by the parties. The regulations of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension for a specified period of time or revocation or monetary penalty in lieu thereof if he finds it to be in order.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer shall be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the accused.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in Customs matters. The other party to the hearing shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record.